

## REMARKS

The Examiner is thanked for the careful examination of the application. In view of the Office Action, claims 1 and 2, the only independent claims pending, have been amended. New claims 44 and 45 have been added.

### Summers

Claims 1, 2, 4 – 6, 8, 9, 17 – 20, 22, 23, 26, 35, 36, 38, 39, and 42 have been rejected under 35 USC 102(b) as allegedly being anticipated by USP 3,952,746, hereinafter Summers. And, claims 7, 10, 11, 21, 24, 25, 37, 40, and 41 have been rejected under 35 USC 103(a) as allegedly being obvious over Summers

The amended claims now recite an absorbent article combination that includes, among other elements, a separate strip of material fastened on the inside of the backsheet or being an integral part of the backsheet.

Specifically, it is recited that the strip part has a color and wherein that color is different than the color of the remaining part of the backsheet

Further, it is recited that the color of the strip is an indicia that provides an indication of a product type, size, or absorption capacity of the article.

In the Official Action, the Examiner argues that the opening 52 of Summers corresponds to the claimed strip. However, the opening 52 in Summers is colorless. The Examiner expressly admits such - "it is noted that the strip part of Summers is transparent (i.e. **colorless**)."<sup>1</sup> See also Official Action of 10/18/2007, page 2 (emphasis added). Moreover, the opening 52 in Summers has no other function than allowing the caretaker to observe any color change of the wetness indicator to determine whether the diaper has been wetted or not. Thus, the opening 52 of Summers must only be transparent in order to allow a user to observe any change of color of the wetness indicator located under the transparent strip.

Accordingly, the opening 52 Summers does not have a color (it is colorless). Yet, the claims recite a strip part that has a color. Accordingly, the claims are clearly not anticipated by Summers.

Furthermore, there is no teaching in Summers that the (transparent) color of the opening 52 *is an indicia* that provides an indication of a product type, size, or absorption capacity of the article, as is now recited in the amended claims 1 and 2. Contrary to the position of the Examiner, there is no structure on the opening 52 that

would indicate the type, size or total absorption capacity of the article. However, the presently claimed invention recites that the color of the strip is an indicia that provides an indication of a product type, size, or absorption capacity of the article.

The indicia is positively recited in the presently claimed invention. Thus, the Examiner's argument that the claimed strip does not comprise an indicia but merely an indication (merely a functionality of the strip) is moot. Accordingly, the claims are clearly not anticipated by Summers.

The claims are clearly not anticipated by Summers and, further, the Examiner has failed to provide a *prima facie* case of obviousness. Accordingly, the rejections based on Summers must be withdrawn.

### Cammarota

Claims 1 – 11, 18 – 25, 27 – 41, and 43 have been rejected under 35 USC 102(e) as allegedly being anticipated by USP 6,307,119, hereinafter Cammarota.

Claims 1 and 2 each recite, *inter alia*, that the wetness indicator is disposed on the strip. This recitation was expressly added from claims 17 and 26.

In the Office Action of 12/05/2006, the Examiner expressly states that claims 17 and 26 are allowable. Claims 17 recited "The absorbent article as claimed in claim 1, wherein the wetness indicator is disposed on the strip." Claim 26 recited "The absorbent article as claimed in claim 2, wherein the wetness indicator is disposed on the strip."

The Office Action, at page 5, expressly states:

The following is a statement of reasons for the indication of allowable subject matter: ***The prior art of record fails to disclose the wetness indicator being disposed on the strip.*** The closest prior art of record, Cammarota, discloses the strip 72 being a separate element from the wetness indicator 66, as shown in figure 1, and does not suggest combination of the strip 72 and wetness indicator 66. Therefore, Cammarota does not disclose or fairly suggest the claimed invention.

(Emphasis added). Applicants maintain such is still the case. Cammarota fails to disclose the wetness indicator being disposed on the strip.

Applicant submits that the Examiner has failed to provide evidence of anticipation or a *prima facie* case of obviousness.

With regard to the rejection of claims 8 and 22, the Examiner states "the article further comprises printed symbols 'big boy' or 'big girl,' as disclosed in column 7, lines 13 – 14, which are capable of indicating the type or size of the product." However, Applicant submits that those terms are not provided to indicate size, they are provided to give encouragement to the child wearing the product, i.e., reassurance that they are a big boy or a big girl. If the terms were intended to indicate size, there would have been an indication of other sizes, such as "small" or "medium".

Furthermore, there is no teaching or suggestion in Cammarota of using the strip 72 to indicate the size or total absorption capacity of the article. The Examiner's attention is directed to § 2143.01 of the MPEP, wherein there is a paragraph entitled "**FACT THAT REFERENCES CAN BE COMBINED OR MODIFIED IS NOT SUFFICIENT TO ESTABLISH PRIMA FACIE OBVIOUSNESS**" which clearly states that the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness. Accordingly, it is not enough that the strip 72 could be modified or used to indicate the size or absorbent capacity of the article. There must be some teaching or suggestion to do so. In view of the fact that there is no such teaching, Applicant submits that the Examiner has failed to provide evidence of anticipation or a *prima facie* case of obviousness. Accordingly, the rejection based on Cammarota must be withdrawn.

Accordingly, claims 1, 2, 5 – 7, 9 – 11, 19 – 21, and 23 - 25 should now be in condition for allowance.

### **New Claims**

New Claims 44 and 45 have been added. Support for these claims may be found throughout the specification.

Each of claims 44 and 45 recite an assortment of products comprising a plurality of absorbent articles of at least two different types, sizes, or absorption capacities of the articles wherein each absorbent article comprises, *inter alia*, a strip part wherein different colors of the strip are an indicia that provides an indication of the difference in the product type, size, or absorption capacity of the article.

Claims 44 and 45 are patentable over the cited art for reasons similar to why claims 1 and 2 are patentable. For example, the product assortment of claims 44 and 45 is not taught or suggested by Summer because the opening 52 in Summers

is transparent. The opening 52 in Summers has no other function than allowing the caretaker to observe any color change of the wetness indicator to determine whether the diaper has been wetted or not. Thus, the opening 52 of Summers must only be transparent in order to allow a user to observe any change of color of the wetness indicator located under the transparent strip. Accordingly, the opening 52 Summers cannot provide different colors to indicate different product type, size, or absorption capacity of the article of two different absorbent articles.

With regard to Cammarota, Cammarota fails to disclose the wetness indicator being disposed on the strip.

Accordingly, claims 44 and 45 are patentable over the cited art. Entry and allowance of the claims is respectfully requested.

**Conclusion**

In the event that there are any questions concerning this Amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution of the application may be expedited.

Respectfully submitted,

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